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MEMORANDUM

DEC 20 2002

TO: The Commission

FROM: Lawrence H. Norton
General Counsel

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for Enforcement

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RE: MUR 5338 – The Leadership Forum, *et al.*—
Severance of Respondents, Opening of New MUR

On November 21, 2002, the Commission received a complaint from Common Cause, Democracy 21, The Campaign and Media Legal Center, and the Center for Responsive Politics. The complaint alleges that a number of recently formed organizations may be “directly or indirectly established, financed, maintained or controlled,” within the meaning of 2 U.S.C. § 441i(a)(2) and 11 C.F.R. § 300.2(c), by national party committees; that these organizations intend to solicit, receive and spend non-Federal funds in violation of 2 U.S.C. § 441i(a)(1); and that they do not intend to report their financial activity to the Commission, in violation of 2 U.S.C. § 434(e).¹ On November 26 and December 6, 2002, the Commission received supplements to the complaint consisting of exhibits that had been referred to in the complaint.

¹ The complaint also alleges that one of these organizations, the Democratic State Parties Organization, Inc., may be directly or indirectly established, financed, maintained or controlled by state party committees, and that its intention to spend non-Federal funds on “Federal election activity” thereby violates 2 U.S.C. § 441i(b)(1). MUR 5338, Complaint at 15-16.

The complaint focuses on two principal sets of facts. One of these involves the Democratic State Parties Organization, Inc. ("DSPO"); the other involves an organization known as The Leadership Forum.² These organizations and other allegedly related organizations and individuals are listed in the complaint's caption and are referred to as "parties" in the body of the complaint.³ MUR 5338, Complaint at 1-2, 9-10. The complaint also alleges that other similar organizations and individuals associated with them may be about to commit similar violations. *Id.* at 4-5; November 26, 2002 Supplement to Complaint, Exhibit H (discussion of Progress for America in Washington Post article). These other organizations and individuals have also been notified of the complaint.⁴

This unusually important matter warrants expedited treatment. It is the first complaint to allege violations of provisions of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (March 27, 2002), and regulations the Commission has promulgated to implement BCRA. Early action is necessary to provide the regulated community with "as applied" guidance about the scope of the phrase "directly or indirectly established, financed, maintained or controlled." Moreover, if the facts turn out to support any reason to believe determinations, expedited enforcement may offer the Commission the comparatively rare opportunity to prevent violations instead of punish them. Accordingly, although we still await responses and the matter is not yet rated, it has been activated and assigned to staff.

However, the nature of the complaint presents a complication. The complaint alleges that specific transactions or incidents demonstrate that The Leadership Forum and the DSPO are directly or indirectly established, financed, maintained or controlled by national or state party committees. MUR 5338, Complaint at 6, 11, 12 (discussing \$1 million transfer from NRCC to The Leadership Forum), 14 (discussing provisions in DSPO corporate charter providing that "members" of corporation shall be "the state committee of the Democratic Party in each of the 50 states of the United States of America"), 15 (discussing report that DNC chair told pre-

² On November 21, counsel for The Leadership Forum requested an advisory opinion regarding essentially the same issue raised in the complaint. The Commission received counsel's letter 44 minutes before it received the complaint. This Office did not docket the letter as an Advisory Opinion Request. Instead, by letter dated December 2, 2002, it asked counsel to provide additional information necessary to form a "complete written request" within the meaning of 11 C.F.R. § 112.1(c). Counsel has indicated that a response to that letter will be forthcoming, but has not indicated precisely when. He has also indicated he expects to file a response to the complaint by the due date of December 27, 2002.

³ The "parties" allegedly related to The Leadership Forum are the National Republican Congressional Committee ("NRCC"), Susan Hirschmann, and L. William Paxon. Those allegedly related to the DSPO are DNC Services Corp./Democratic National Committee ("DNC") and Terry McAuliffe, as chairman, and Joseph Carmichael. All of these organizations and individuals, as well as the treasurers of the NRCC and DNC, were notified of the complaint.

⁴ The other notified organizations and individuals are: U.S. Representative Tom DeLay; the Democratic Senate Majority PAC-Non Federal Account and Monica Dixon, as treasurer; the PAC for a Democratic House-Non Federal Account and Karen Hancox, as treasurer; Democratic Issues Agenda and its treasurer (subsequently identified as Diane Evans); Empowerment for a New Century and its treasurer (subsequently identified as Antonio Harrison); Americans for A Republican Majority (ARMPAC) and Corwin Teltschik, as treasurer; Strategic Task Force to Mobilize People and its treasurer; and Progress for America and its treasurer.

BCRA soft money contributors and fundraisers to "assist the newly created party group"). On the other hand, while it unquestionably alleges that the other supposedly similar organizations are "being set up to serve as conduits for national party committees and federal officeholders to raise and spend soft money on federal election activities, in violation of the BCRA," *id.* at 5, it is less specific about who the sponsors of these organizations are or about any specific transactions or incidents that demonstrate establishment, financing, maintenance or control.

Despite this lack of specificity we do not believe the other respondents should be dismissed at this early stage before staff has fully evaluated the allegations in light of any additional publicly available information.⁵ However, inclusion of these respondents in a First General Counsel's report would make expedited action more difficult, both because of the increased work that would have to be done to examine the public record regarding these respondents and simply because there are more of them.

Accordingly, this Office intends to sever from MUR 5338 the respondents listed in footnote 4, *supra*, open a new MUR with respect to those respondents, and return that MUR to the Central Enforcement Docket for handling in the ordinary course of business. This will allow us to move forward quickly on the allegations that best lend themselves to quick action, while preserving the other allegations for future action, if warranted. We hope to circulate a First General Counsel's Report on the remainder of MUR 5338, dealing with the DSPO and Leadership Forum allegations, shortly.

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Although the facts provided in a sworn complaint may be insufficient, when coupled with other information available to the Commission . . . the facts may merit a complete investigation. By the same turn, a persuasive and strong complaint may not merit an investigation because the Commission possesses reliable evidence indicating that no violation has occurred.

In re Federal Election Campaign Act Litigation, 474 F.Supp. 1044, 1046 (D.D.C. 1979).